EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

_____

Supreme Court, U.S.
FILED
FEB 2 2 1999
OFFICE OF THE CLERK

Richard Cass — PETITIONER
(Your Name)

VS.

Pelican Bay State Prison — RESPONDENT(S)

PROOF OF SERVICE

I, Richard Cass, do swear or declare that on this date, Jan, 19 99, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Pelican Bay State Prison See List of parties as Respondents P.O. Box 7500 Crescent City Ca 95531

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Jan, 19 99

(Signature)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CALIFORNIA

Richard Cross
Plaintiff,

v.

Robert Byers et al Defendants
Lesters
Defendant.

CASE NO. 98-1716

PRISONER'S
IN FORMA PAUPERIS
APPLICATION

I, Richard Cross, declare under penalty of perjury that I am the plaintiff in the above entitled case and that the information I offer throughout this application is true and correct. I offer this application in support of my request to proceed without being required to prepay the full amount of fees, costs or give security. I state that because of my poverty I am unable to pay the costs of this action or give security, and that I believe that I am entitled to relief.

In support of this application, I provide the following information:

1. Are you presently employed? Yes _____ No ✓

If your answer is "yes," state both your gross and net salary or wages per month, and give the name and address of your employer:

Gross: _____ Net: _____

Employer: _____

_____

If the answer is "no," state the date of last employment and the amount of the gross and net salary and wages per month which you received. (If you are imprisoned, specify the last place of employment prior to imprisonment.)

_____

_____

(rev. 5/96)

2. Have you received, within the past twelve (12) months, any money from any of the following sources:

a. Business, Profession or self employment — Yes ____ No ____
b. Income from stocks, bonds, or royalties? — Yes ____ No ____
c. Rent payments? — Yes ____ No ____
d. Pensions, annuities, or life insurance payments? — Yes ____ No ____
e. Federal or State welfare payments, Social Security or other government source? — Yes ____ No ____

If the answer is "yes" to any of the above, describe each source of money and state the amount received from each.

_____

_____

3. Are you married? Yes ____ No ____

Spouse's Full Name: _____

Spouse's Place of Employment: _____

Spouse's Monthly Salary, Wages or Income:

Gross $_____ Net $_____

4. a. List amount you contribute to your spouse's support:

$ _____

b. List the persons other than your spouse who are dependent upon you for support and indicate how much you contribute toward their support:.

_____

_____

5. Do you own or are you buying a home? Yes ____ No ____

Estimated Market Value: $_____ Amount of Mortgage: $_____

6. Do you own an automobile? Yes ____ No ____

Make _____ Year _____ Model _____

Is it financed? Yes ____ No ____ If so, Total due: $ _____

Monthly Payment: $ _____

7. Do you have a bank account? (If you are a prisoner, include funds in your prison account, and provide the certificate attached, signed by an officer of the prison.)

Yes _____ No ____

Name(s) and address(es) of bank: _____

_____

Present balance(s): $ _____

Do you own any cash? Yes _____ No ____ Amount: $ _____

Do you have any other assets? (If "yes," provide a description of each asset and its estimated market value.) Yes _____ No _____

_____

8. What are your monthly expenses?

Rent: $ _____ Utilities: _____

Food: $ _____ Clothing: _____

Charge Accounts:

Name of Account	Monthly Payment	Total Owed On This Account
_____	$ _____	$ _____
_____	$ _____	$ _____
_____	$ _____	$ _____

9. Do you have any other debts? (List current obligations, indicating amounts and to whom they are payable.)

_____

_____

I declare under the penalty of perjury that the foregoing is true and correct and understand that a false statement herein may result in the dismissal of my claims.

11-19-98
DATE

_____
SIGNATURE OF APPLICANT

(rev. 5/96)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Richard Cross
Appellant/Petitioner

CASE NO.

vs.

98-17116

Robert Ayers and D. Paramo
Appellee/Respondent

APPELLANT'S OR PETITIONER'S INFORMAL BRIEF

1. Jurisdiction

a. Timeliness of Appeal or Petition:

(i) Date of entry of judgment or order of district court: 8-28-98

(ii) Date of service of any motion made after judgment (other than for fees and costs): _____

(iii) Date of entry of order deciding motion _____

(iv) Date notice of appeal or petition filed 9-16-98

(v) For prisoners, date you gave notice of appeal to prison authorities 9-9-98

b. PLEASE ATTACH ONE COPY OF EACH OF THE FOLLOWING:

1. The order from which you are appealing
2. The district court's entry of judgment
3. The district court docket sheet

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Richard W. Wieking
Clerk

450 Golden Gate Avenue
San Francisco, CA 94102
415.522.2000

September 17, 1998

Richard Cross C-78319
Pelican Bay State Prison
P O Box 7500
Crescent City CA 95532

SUBJECT: Request for Payment of Docket Fee

Title: **Richard Cross -v- Pelican Bay State Prison**

Case Number: **C98-3186 VRW (pr)**

Court of Appeals Number:

A notice of appeal was filed with this Court on **9/17/98** and the docketing fee of **$105.00** has not been received. Please forward the above referenced fee to this office immediately.

The check is to be made payable to "CLERK, U.S. DISTRICT COURT."

Sincerely,

RICHARD W. WIEKING, Clerk

by: Lili Marbella
Case Systems Administrator

cc: U.S. Court of Appeals

FILED

SEP 17 9:39 AM '98

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO DIST OF CA

UNITED STATES District Court
NORTHERN District of California

Richard Cross
Petitioner
V.S.
PELICAN BAY STATE PRISON
Robert AYERS AND Defendants
Respondents

CASE NO. C98-386 VRW (PR)
NOTICE OF APPEAL

TO THE ABOVE ENTITLED COURT, Petitioner Respectfully Submits an NOTICE OF APPEAL TO THE Respondents, IN THE UNITED STATES District Court OF APPEALS FOR THE NINTH Circuit, FROM THE DECISION DATED 9-1-98

9-9-98
DATE

PETITIONER
Richard Cross C-78317
P.O. Box 7500 D-1-205-B
Crescent City Ca.
95531

TERMED APPEAL

U.S. District Court
U.S. District for the Northern District of California (S.F.)

CIVIL DOCKET FOR CASE #: 98-CV-3186

Cross v. Pelican Bay State Pr, et al
Assigned to: Judge Vaughn R. Walker
Demand: $0,000
Lead Docket: None
Dkt# in other court: None

Filed: 08/18/98
Nature of Suit: 555
Jurisdiction: Federal Question

Cause: 42:1983 Prisoner Civil Rights

RICHARD M. CROSS
Plaintiff

Richard M. Cross
C-78319
[COR LD NTC] [PRO SE]
PBSP-II
Pelican Bay State Prison
P O Box 7500
Crescent City, CA 95531

v.

PELICAN BAY STATE PRISON
defendant

ROBERT AYERS
defendant

Proceedings include all events. TERMED
3:98cv3186 Cross v. Pelican Bay State Pr, et al
APPEAL

8/18/98	1	COMPLAINT - No Summons(es) issued; Fee status ifpp entered on 8/18/98 [3:98-cv-03186] (llm) [Entry date 08/24/98]
8/18/98	1	IN FORMA PAUPERIS AFFIDAVIT by Plaintiff Richard M. Cross for leave to proceed in forma pauperis [3:98-cv-03186] (llm) [Entry date 08/24/98]
8/18/98	2	CLERK'S NOTICE re insufficient in forma pauperis application [1-1] [3:98-cv-03186] (llm) [Entry date 08/24/98]
8/27/98	3	IN FORMA PAUPERIS AFFIDAVIT by Plaintiff Richard M. Cross for leave to proceed in forma pauperis [3:98-cv-03186] (llm)
8/28/98	4	ORDER by Judge Vaughn R. Walker DENYING request for leave to proceed in forma pauperis [3-1] [1-1], DISMISSING the complaint [1-1] without prejudice to bringing it in a paid complaint; terminating case ; appeal filing ddl 10/1/98 (Date Entered: 9/1/98) (cc: all counsel) [3:98-cv-03186] (llm) [Entry date 09/01/98]
9/16/98	5	NOTICE OF APPEAL by Plaintiff Richard M. Cross from Dist. Court decision terminating case [4-1], order [4-2] Fee status Not Paid [3:98-cv-03186] (llm) [Entry date 09/17/98]
9/16/98	--	Mailed request for payment of docket fee to appellant (cc to USCA) [3:98-cv-03186] (llm) [Entry date 09/17/98]
9/16/98	--	Docket fee notification form and case information sheet to USCA [5-1] [3:98-cv-03186] (llm) [Entry date 09/17/98]
9/16/98	--	Copy of notice of appeal and docket sheet to all counsel [3:98-cv-03186] (llm) [Entry date 09/17/98]
9/16/98	--	CERTIFICATE of Record mailed to USCA, counsel notified. [3:98-cv-03186] (llm) [Entry date 09/17/98]

Case No. # 98-1714

2. Fact of Case

Petitioner filed an appeal and was denied the right to Correspond Confidentially, as stated in the Title 15 Rules and Regulation and Confidential Correspondents,

Respondents K Castro, Otero, Ricco, Bean, Lopez Tenson, Melchior, and Robert Reyes, Denied Petitioner to Correspond Confidentially with the Board of Control with his Tort Claim. (See Cal Appeal as Exhibit)

Petitioner wants that even the appeal Examiner for appeals Failed to Recognize a Clearly Established law, Rule of the Department of Correction in Corresponding Confidentially.

D1 MAIL ROOM FOR INFORMAL REVIEW D1-108L

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS

RECEIVED
MAY 26 1998
INMATE APPEALS

INMATE/PAROLEE APPEAL FORM

CDC 602 (12/87)

Institution/Parole Region: PBSP — Log No. 1. 98 00493 — Category: 3 Conf. mail — 2.

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

D1 108L

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Richard Cross	C-78319	SHU D-1-	[redacted]

A. Describe Problem: INMATE'S CONFIDENTIAL CORRESPONDENCE MAIL WAS OPENED AND DELIVERED TO ME. IN VIOLATION OF CDC TITLE 15 RULES AND REGULATIONS 3141. CONFIDENTIAL CORRESPONDENCE INMATE WOULD LIKE TO APPEAL THIS ACTION, UNDER 3084.1 RIGHT TO APPEAL (A) WITHIN THE TERMS OF 3084.5 LEVELS OF APPEALS REVIEW AND DISPOSITION. (3) (D)(G). THIS HAS HAPPENED NUMEROUS TIMES, SO I FEEL IT IS NECESSARY TO PURSUE THIS ACTION UNDER 3391. CONDUCT OF AN EMPLOYEE.

If you need more space, attach one additional sheet. MAIL DELAYED ON 1-29-98 2 PIECES OF MAIL SEE EXHIBITS SEE EXHIBITS PAGE

B. Action Requested: TO PURSUE THIS COMPLAINT AS AN EMPLOYEE CONDUCT 3391, AND TO EXHAUST MY ADMINISTRATIVE REMEDYS TO PURSUE LEGAL ACTION IN THIS COMPLAINT.

Inmate/Parolee Signature: Richard Cross — Date Submitted: 2-11-98

C. INFORMAL LEVEL (Date Received: 2/11/98)

Staff Response: Although the State Board of Control is logged on the CDC 919 legal mail card, it is not considered confidential and is subject to search in accordance with the CCR Title 15.

Staff Signature: K. Caster — Date Returned to Inmate: 2/13/98

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

THE INFORMAL LEVEL IS WRONG ABOUT ITS RESPONSE. 3141 CONFIDENTIAL CORRESPONDENCE (A)(B)(C)(2)(3) STATES CLEARLY WHAT CONFIDENTIAL CORRESPONDENCE IS AND THAT 3143 EXPLAINS THE PROCESSING OF INCOMING CONFIDENTIAL MAIL. AND THAT MAIL SHOULD BE SEARCH IN FRONT SEE EXHIBITS PAGE

Signature: Richard Cross — Date Submitted: 2-19-98

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number:

SCREENED OUT

PBSP APPEALS 98 FEB 24 PM 12 44 RECEIVED

PBSP APPEALS 98 MAR 5 RECEIVED

MAR 3 1998

FEB 1 0 1998

5 days or "D" + 5 mail 2/25/98 mailed. 10 #rc

First Level ☐ Granted ☐ P. Granted ☒ Denied ☐ Other

E. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: 3-5-98 Due Date: 4-16-98

Interviewed by: See attached

Staff Signature: P Beau Title: OSS I Date Completed: 4-6-98

Division Head Approved Signature: [signature] Title: Capt Returned Date to Inmate: APR 15 1998

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

See 602 attached

Signature: [signature] Date Submitted: 4-15-98

Second Level ☐ Granted ☐ P. Granted ☒ Denied ☐ Other

G. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: 4-17-98 Due Date: 5-15-98

☒ See Attached Letter

Signature: [signature] Date Completed: MAY 11 1998

Warden/Superintendent Signature: [signature] Date Returned to Inmate: MAY 15 1998

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

See Letter

Signature: [signature] Date Submitted: 5-20-98

For the Director's Review, submit all documents to: Director of Corrections
P.O. Box 942883
Sacramento, CA 94283-0001
Attn: Chief, Inmate Appeals

DIRECTOR'S ACTION: ☐ Granted ☐ P. Granted ☐ Denied ☐ Other

☐ See Attached Letter

Date:

CDC 602 (12/87)

State of California — Department of Corrections

D1-201L

ATE/PAROLEE APPEALS SCREENING FORM — CDC Form 695

NAME: Cross PBSP LOG NO: _____

CDC #: C28319 CDC HOUSING: D1-201 OTHER LOG #: _____

YOUR APPEAL IS BEING RETURNED FOR THE FOLLOWING REASON(S):

[ ] 4. CCR 3084.2(b), 3084.3(c)(4) and 3084.5(a)(1) REQUIRES, AND YOU FAILED TO ATTACH CREDIBLE EVIDENCE OF AN ATTEMPT TO RESOLVE THE ISSUE INFORMALLY. This must be done prior to the Appeal being accepted/logged for assignment to the Formal Level. If a staff member fails to respond after 10 working days, use the Chain of Command and submit the Appeal to that staff members Supervisor, or unit/area Supervisors.

[ ] Counselor	[ ] R&R	[ ] Med Clinic	[ ] Records
[ ] Unit Officer	[ ] PSU Prop.	[ ] Dental Clinic	[ ] I/M Assign
[ ] Mail Room	[ ] SHU Prop.	[ ] Psych Office	[ ] Trust Office
[ ] Law Library	[ ] Food Serv	[ ] Med Records	[ ] Plant Ops
[ ] Work Supervisor		[ ] Other _____	

[X] 5. You have not adequately completed the CDC Form 602, or have not attached the proper documents. Follow instructions, attach the items noted below, send what documents you have, or explain why they are not available, 3084.3(c)(5):

[X] Supporting Documents & Receipts	[ ] CDC 7362 Health Care Req Co-Pay
[ ] GA 22 Request For Interview	[ ] CDC 128-C Medical Chrono
[ ] CDC 115 Results With final dispo	[ ] Cell Search Slip
[ ] CDC 115 IE/DA information/Report	[ ] Property Inventory Receipt
[ ] CDC 115 Supplemental Reports	[ ] CDC 143 Prop. Transfer Receipt
[ ] CDC 114-D Lockup Order	[ ] Package Inventory Slip
[ ] CDC 1030 Confidential Disclosure	[ ] Proof of Ownership / Value
[ ] Lab Results Sheet	[ ] Board of Control Release Form
[ ] CDC 7219 Medical Report	[ ] Trust Statement
[ ] CDC 128-A _____	[ ] CDC 193 Trust Acct Wthdrwl Ord
[ ] CDC 128-B _____	[ ] Legal Status Summary
[ ] CDC 128-G _____	[ ] Abstract of Judgment (AOJ)
[ ] CDC 629A / 629B Assess SHU Term	[ ] CDC 1858 [PC 148.6/CCR 3391(d)]/Info. Advis.
[ ] CDC 812 / A / B Critical / Enemy	[ ] Emerg. unwarranted CCR 3084.7(a)(2)(A)
[ ] CDC 839/840 Class/Reclass Score	[ ] Failed to Complete Section _____
[ ] CDC 958 Restoration Request	[X] Sign & Date Section D
[ ] CDC 1819 Correspondence Denial	[ ] CDC Form 602 log # _____
[X] Other no exhibits are attached	

SCREENED OUT

[ ] 7. The issue has been resolved, PBSP Appeal Log No. _____. A copy of the Second (Warden's) level of review is attached, CCR 3084.2(g)(1)(2(3).

[ ] 8. Abuse of the appeal procedure (see "Comments").

Comments: MY EXHIBITS WERE ATTACHED AT THE INFORMAL LEVEL BUT, KNOW THEY WERE MISSING, I DID DATE THE

G. M. Ater

G. M. ATER
PBSP Appeals Coordinator

FEB 25 1998
Date

This screening action may not be appealed unless the above reason/s are inaccurate and the inmate can provide supporting arguments against the screening decision.

PERMANENT APPEAL ATTACHMENT - DO NOT REMOVE

FEB 18 1998

OF THE INMATE'S PARENTS. THE REVIEWER IS SUGESTING THAT EVEN WHEN LEGAL MAIL IS IS LOGGED ON THE CDC 119, ITS SUBJECT TO BEING SEARCHED. THIS IS TOTALLY UNREASONABLE, LEGAL MAIL IS CONSIDERED CONFIDENTIAL AND SO IS THE CORRESPONDENTS. THIS VICTIMIZES INMATE LEGAL AND CONFIDENTIALITY AS TO ITS LEGAL AND CONFIDENTIAL CONTENTS AND COMPROMISE HIS CONSTITUTIONAL RIGHTS GUARANTEED BY THE LAW, AND VIOLATES THE RULES AND REGULATIONS.

INMATE WISHES TO APPEAL THE INFORMAL LEVEL UNDER 3084.5 LEVELS OF APPEALS AND RULING AND DISPOSITION (3)(D)(G) AS EXPLAINED IN A. PROBLEM.

EXHIBITS DUE MISSING FROM 602

SUPPLEMENT PAGE

RE: PELICAN BAY STATE PRISON
Appeal Log #PBSP-98-00493
First Level Reviewer's Response

Inmate: Cross C-78319

APPEAL DECISION:

Denied

APPEAL ISSUE: (Modified)

Mail from the Board of Control was delivered to me opened and processed as regular mail. I want to pursue this complaint as an employee conduct violation.

APPEAL RESPONSE:

You were interviewed by K. Necco, Office Assistant on 4-3-98 via telephone.

Mailroom researched your complaint and found the mailroom staff acted according to procedures.

During the interview you stated that you have received prior mailings from Board Of Control (BOC) as confidential. This would have been an oversight on our part, not procedure. BOC does not meet the criteria to be confidential as specified in (CCR) Title 15, 3141. BOC was contacted on 4-3-98 and they concur that they are not considered a confidential mailing source. BOC mail is logged on the CDC 119 mail card, but, still processed as regular mail

Mailroom is operating in compliance with the California Code of Regulations (CCR) Title 15 and Operating Procedures of this institution.

Based on the above; your appeal has been DENIED at the First Level of Review.

P Bean 4-6-98

P. BEAN Date
Office Services Supervisor I

A. LOPEZ Date 4/21/98
Associate Warden
Central Services

P1.

IN RESPONCE TO THE FIRST LEVEL OF REVIEW INMATE STATES THAT THE RULES AND REGULATION OR THE DEPARTMENTAL PROCEDURES OF THE TITLE 15 STATE UNDER THE MAIL PROCEDURES 3141. CONFIDANTIAL CORRESPONDENCE (H)(B)(C)(3)(7) WHICH STATES THAT ALL City County STATE AND FEDERAL OFFICIALS HAVING RESPONSIBILITIES FOR THE INMATE'S CUSTODY. PRESENT. PRIOR OR ANTICIPATE CUSTODY PAROLE OR PROBATION. AND THE DIRECTOR. CHIEF ~~DIRECTOR~~ DEPUTY DIRECTOR. DEPUTY DIRECTOR'S ASSISTANT DIRECTORS EXECUTIVE ASSISTANT TO THE DIRECTOR AND THE CHIEF INMATE APPEALS OF THE DEPARTMENT OF CORRECTIONS.

THE BOARD OF CONTROL FOR GOVERNMENT CLAIMS FALLS UNDER THIS RULE ~~IS~~ 3141(C)(3) AS A STATE FUNCTION WITHIN THE MEANS OF THE DEPARTMENT OF CORRECTION. BECAUSE THEY ARE RESPONSIBLE FOR THE CUSTODY OF THIS INMATE.

205

PELICAN BAY STATE PRISON

SECOND LEVEL REVIEW

DATE: MAY 11 1998

Inmate CROSS, C-78319
Pelican Bay State Prison
Facility D, Security Housing Unit
Building 1, Cell 108L

RE: WARDEN'S LEVEL DECISION — APPEAL: DENIED
APPEAL LOG NO. 98-00493 — ISSUE: CONFIDENTIAL MAIL

This matter was reviewed on behalf of ROBERT L. AYERS, JR., the Warden at Pelican Bay State Prison (PBSP), by Appeals Coordinator D. J. Helsel, Correctional Captain.

ISSUES

Whether or not the inmate's mail is being handled appropriately by the Mailroom.

FINDINGS

I

The inmate contends two pieces of mail delivered on January 29, 1998, from the Board of Control were mishandled by staff who opened and inspected his mail. He considered mail from the Board of Control to be confidential.

II

The First Level of review denied the inmate's appeal indicating the Board of Control was not listed in the California Code of Regulations (CCR), Title 15, Section 3141, as an agency whose correspondence would be considered confidential.

III

The Board of Control is a department distinctly separate from the California Department of Corrections (CDC) and the Youth and Adult Correctional Agency. The CDC falls under the direction of the Youth and Adult Correctional Agency, which in turn reports directly to the Governor. The Board of Control reports directly to the Governor. The Board of Control has no responsibility for the inmate's custody. That responsibility is vested in the Director of Corrections as addressed in the California Penal Code, Title 7, Chapter 2.

As pointed out in the First Level response, the CCR, Title 15, Section 3141(c), is specific in describing "persons and staff members of persons with whom inmates may correspond confidentially." The Board of Control and its staff are not on that list.

DETERMINATION OF ISSUE

Based on the above review, it is clear the inmate has misinterpreted the Director's Rules as they relate to confidential mail.

The inmate's appeal is **DENIED** at the Second Level of review.

MODIFICATION ORDER

No modification of this decision or action taken is required.

ROBERT L. AYERS, JR.
Warden

dh-3

TO THE Director.

INMATE STATES THAT His Confidential MAIL CORRESPONDENTS IS BEING VIOLATED AS SEEN IN 3191. (A)(3)(C)(3)(7). AND THAT THE PROCEDURE IS BE COMPROMISED - AS STATED IN THIS RULE.

INMATE FURTHER STATES TO SHOW WHY THIS MAIL IS CONFIDENTIAL CORRESPONDENTS.

AS SEEN IN THE Rule 3191 (A)(3)(C)(3)(7), THE DIRECTOR IS CONSIDERED CONFIDENTIAL CORRESPONDENTS, AS FOR FILING 602 GRIEVANCES OR COMPLAINTS.

FURTHER MORE IF INMATE PURSUES HIS COMPLAINT TO THE BOARD OF CONTROL, AS STATED IN 3084.7 EXCEPTIONS TO THE REGULAR BOARD SECTION (E) FOR APPEALS OR DAMAGES (A IT STATES THAT "AN INMATE CLAIM FOCUS TO THE BOARD OF CONTROL IF, ~~HOW~~ SHALL BE COMPLETED AND ATTACHED TO AN APPEAL."!

NOW THIS RULE IS JUST AN EXAMPLE OF THE CONFIDENTIAL STANDARDS AND USE! ALL DOCUMENTS AND CORRESPONDENTS THAT LEAVE THE INSTITUTION, ARE DOCUMENTED CONFIDENTIAL CORRESPONDENTS, BUT THEY ARE NOW NOT CONSIDERED CONFIDENTIAL ON RETURN FOR USE.

THIS POLICY IS IN CONFLICT WITH THE RULES AND REGULATION AS TO CONFIDENTIAL CORRESPONDENCE.

THIS PROCEDURE USED TO BE CONFIDENTIAL AND I DON'T SEE WHY IT DOES NOT REMAIN CONFIDENTIAL, AS REGULATIONS DEMAND.

THIS RULE 391 DIRECTS FOR CONFIDENTIAL CORRESPONDENCE FOR INMATE OR RETURN MAIL FROM THE BOARD OF CONTROL, SHOULD REMAIN CONFIDENTIAL BECAUSE IT CORRELATES WITH THE DIRECTOR OF CORRECTIONS

THANK YOU

Rick Cox

DEPARTMENT OF CORRECTIONS
P.O. Box 942883
Sacramento, CA 94283-0001

July 17, 1998

Cross, C-78319
Pelican Bay State Prison
P.O. Box 7000
Crescent City, CA 95531-7000

RE: DIRECTOR LEVEL DECISION
CASE NO. 9708667
INSTITUTION LOG NO. 98-00493

This matter was reviewed on the record on behalf of the California Department of Corrections, Inmate Appeals Branch, on July 3, 1998, by Appeals Examiner M. H. Jensen.

All submitted documentation and supporting arguments of the parties have been considered. To the extent such documentation and arguments are in accordance with the findings and conclusions stated herein, they have been accepted. To the extent they are inconsistent therewith, they have been rejected.

ISSUES

Whether or not the institution appropriately denied the appellant's request to receive mail from the State Board of Control (BOC) as confidential mail.

FINDINGS

I

The appellant states that the regulations require that mail received from the BOC should be considered confidential and searched in the presence of the inmate.

II

The institution takes the position that mail from the BOC is logged but does not come under the heading of confidential correspondence. The Second Level Response indicated that the BOC was contacted and they informed the institution that they did not consider themselves as confidential correspondents.

III

The Department's rule regarding Confidential Correspondence is found in the California Code of Regulations (CCR), Title 15, Section 3141.

> **3141. Confidential Correspondence.**
> (a) Inmates and persons confined in departmental facilities may correspond confidentially with the persons or the staff members of the persons listed in subsection (c) of this section. Confidential correspondence means that the correspondence shall not be read by any employee except as prescribed in Section 3142.
> (c) Persons and staff members of persons with whom inmates may correspond confidentially include:
> (1) All state and federal elected officials.
> (2) All state and federal officials appointed by the governor or the President of the United States.
> (3) All city, county, state and federal officials having responsibility for the inmate's present, prior or anticipated custody, parole or probation supervision.
> (4) All state and federal judges and courts.
> (5) An attorney at law listed with a state bar association.
> (6) The director, chief deputy director, deputy directors, assistant directors, executive assistant to the director, and the chief, inmate appeals, of the Department of Corrections.
> (7) Legitimate legal service organizations including, but not limited to: the American Civil Liberties Union, the Prison Law Office, the Young Lawyers Section of the American Bar Association, and the National Association of Criminal Defense Lawyers.

The documentation and arguments presented are persuasive that the appellant has the right to have correspondence received from the BOC to be processed as confidential correspondence.

The appellant and the institution disagree on whether or not the appellant may receive correspondence from the BOC as confidential correspondence, with staff being required to open and search the correspondence in the presence of the appellant.

Whereas the institution is correct in stating that CCR 3141 does not list the BOC as meeting the criteria for the

confidential mail classification, other circumstances present justify the decision that the confidential classification is appropriate. The director of the BOC is appointed by the governor, and as such fits the criteria established under CCR 3141. Secondly, the BOC is considered as an extension of the Department's appeal system, and as such the appellant should be provided the same protections as he is provided in his correspondence within the appeal process.

DETERMINATION OF ISSUE

The institution inappropriately denied the appellant's request.

The appeal is partially granted.

ORDER

A modification order shall direct PBSP to modify their institution procedures to ensure staff are aware and adhere to the determination that any State Board of Control correspondence with an inmate is considered confidential mail, and as such should be opened and inspected, in the presence of the inmate, as required by CCR 3141. No other modifications are required. The appellant's request for adverse action against the CO that opened his letter will not be granted in that the employee was following the institution's procedure at the time.

This case was discussed with J. McGrath, Chief Deputy Warden.

This decision exhausts the administrative remedy available to appellant within the Department of Corrections.

M. H. JENSEN, Appeals Examiner
Inmate Appeals Branch

LINDA L. MELCHING, Chief
Inmate Appeals Branch

cc: Warden, PBSP
Appeals Coordinator, PBSP

3. What did you ask the district court to do (for example, award damages, give injunctive relief, order your release from prison, etc.)?

Punitive Damages for Disregard for a Known Legal Right, Neglect, and Conduct

4. State the claim or claims you raised at the district court.

Denied Right to Appeal Confidential Correspondence and Employee Contract for Violation of Known Rights

5. What issues are you raising on appeal?

Denied Confidential Correspondence, Rule Violation Failure to Post Notice of Rule Change, and Challenge Constitutional Rights to Correspond Confidential

6. Did you present all these issues to the district court?

Yes/No If not, why?

7. What law supports these issues on appeal? (You may, but need not, refer to cases and statutes.)

Under section 1983 of the Civil Rights Act of 1871 a Prisoner may seek redress when a Person acting under Color of State Law, Deprives the Prisoner of Rights Guaranteed By the Constitution or Federal Laws. See 42 USC section 1983 (1994). Also See In Lugar V. Edmonson Oil Co 457 U.S 922 (1982) The Supreme Court enunciated a Two-Part Test for determining whether a Private individual has acted under Color of State Law. First the Claimed Deprivation must result From the exercise of a Right or Privilege Having its Source in State Authority. And Second under the Facts of the instant case. the Private party must be fairly characterizes as a State actor. Id.

In United States V. Classic 313 U.S 299 (1941). The Court held that "Misuse of Power possessed By the Authority of the State Law and made possible only because the wrongdoer is Clothed with the Authority of State Law, is Action Taken 'under Color of State Law'."

Generally, Prison officials are shielded From Civil Damages and Liability as long as Their Conduct Does not Violate Clearly Established Statutory or Constitutional Rights of which a Reasonable Person would Have Known. See Harlow V. Fitzgerald 457 U.S 800, 818. (1982) also Davis V. Scherer 468 U.S. 183, 197. (1984) Petitioner Can only Overcome Immunity By showing of That Rights Clearly Violated

CASE NO. #-96-1711C

#7 Cont.

ESTABLISHED AT TIME OF VIOLATION, SEE BIERGELL V. REED 54 F.3d 1445, 1458 (3RD CIR 1995) QUALIFIED IMMUNITY INAPPLICABLE WHERE PRISON OFFICIALS OPENED PRISONERS INCOMING CONFIDENTIAL MAIL, OUTSIDE OF THE PRISONERS PRESENCE, CLEARLY VIOLATING ESTABLISHED REGULATION OF WHICH A REASONABLE PERSON WOULD HAVE KNOWN.

PRISON OFFICIALS CANNOT RELY ON IGNORANCE OF EVEN THE MOST ESOTERIC ASPECTS OF LAW TO AVOID LIABILITY, SEE LEWIS V. CASEY 518 U.S. 343 (1996)

PRISON OFFICIALS ARE PRESUMED TO BE AWARE OF THE LAW GOVERNING THEIR CONDUCT, THE REASONABLENESS STANDARD IS DETERMINED UNDER SETTLED LAW IN THE CIRCUMSTANCES. SEE MASTERS V. CROUCH 872 F.2d 1248, 1251 (7TH CIR)

UNDER SECTION 1983 THE COURT MAY IMPOSE MONETARY LIABILITY ON PERSONS RESPONSIBLE FOR THE DEPRIVATION OF RIGHTS SECURED BY THE CONSTITUTION AND FEDERAL RIGHTS. SEE KELLY V. CURTIS 21 F.3d 1544, 1553 (11TH CIR 1994) AWARDING DAMAGES NUMEROUS PRISONERS WHO PREVAILED AGAINST UNCONSTITUTIONAL RIGHTS VIOLATORS. SEE ALSO DAVIS V. LOCKE 936 F.2d 1208, 1214, (11TH CIR 1991),

8. Do you have any other cases pending in this court? If so, give the name and docket number of each case.

See Docket on Case

9. Have you filed any previous cases which have been decided by this court? If so, give the name and docket number of each case.

See Docket on Case

11-19-98
DATE

[signature] C.7830
SIGNATURE

P.O. Box 7000 D1-105-B
ADDRESS

Pleasant City OH 43551

CERTIFICATE OF SERVICE

Case Name: CROSS v. AYERS

Case No.: C-17116

IMPORTANT: 2 copies of this brief and any attachments must be sent to ALL parties in this case. Please list below the names and addresses of the parties who were sent a copy of your brief and the dates on which they were served. Be sure to sign the statement below.

I certify that a copy of this brief and any attachments was served, either in person or by mail, on the persons listed below.

Signature
Notary NOT required

Name	Address	Date Served
Robert Ayers	Pelican Bay State Prison	
K. Coster	P.O. Box 7500	
Ayers	Crescent City CA.	
Acco	95531	11-19-98
Bern		
Lopez		
Jensen		
Melchini		

GPO 784-802/59045